Neutral Citation Number: [2020] EWHC 1287 (Fam)

Case No: FD20P00251

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Sitting Remotely

Date: 22/05/2020

Before:

THE HONOURABLE MR JUSTICE MACDONALD

- -

Between:

HX	**Applicant**
- and -	
A Local Authority	**First Respondent**
-and-	
Y	**Second Respondent**
-and-	
Z	**Third Respondent**
(By Her Children's Guardian)	

- -
- -

Ms Christina Omideyi (instructed by **J I Solicitors**) for the **Applicant**
Ms Julie Doyle (instructed by **Local Authority Solicitor**) for the **First Respondent**
Mr Jason Green (instructed by **Dawson Cornwell**) for the **Second Respondent**
Mr Alan Cyrne (of **Temperley Taylor LLP**) for the **Third Respondent**

Hearing date: 19 May 2020

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic. Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be at 10.30am on 22 May 2020.

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MR JUSTICE MACDONALD

This judgment was delivered in private. The Judge has given permission for this anonymised version of the judgment (and any of the facts and matters contained in it) to be published on condition always that the names and the addresses of the parties and the child must not be published. For the avoidance of doubt, the strict prohibition on publishing the names and addresses of the parties and the child will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court.

Mr Justice MacDonald:

INTRODUCTION

1. In this matter I am concerned with an application under the inherent jurisdiction of the High Court to revoke an adoption order made on 8 November 2019 in respect of Z. Z is represented by Mr Alan Cryne through her children's guardian, Daniel Yartey. The application is made by the birth father of Z, HX (hereafter 'the birth father') represented by Ms Christina Omideyi of counsel. The application to revoke the adoption order is supported by the birth mother, Y (hereafter 'the birth mother'), represented by Mr Jason Green of counsel. The application is opposed by the local authority, the adoption agency in this case, represented by Ms Julie Doyle of counsel, and by the Children's Guardian. In light of the position of the local authority and Children's Guardian, I did not consider it necessary to join the adoptive parents as parties to these proceedings, although they are aware of the birth father's application.

2. The birth father's application to revoke the adoption order was made on 27 April 2020. In seeking to have the adoption order revoked, the birth father makes clear in his application form that he relies on the following matters:

> "The applicant is adamant that he was not made aware of the proceedings. Firstly, because his daughter who was born in Uganda was removed from Uganda by her mother with his knowledge and ties severed. The father continues to reside in Uganda. There (*sic*) local authority failed to take adequate steps to locate and notify the father of the proceedings.
>
> The applicant was unaware of the care or placement proceedings regarding his daughter. After the making of care and placement orders he contacted the court. The Ugandan embassy wrote to the court prior to the permission hearing to express their interest in the case as the child is a Ugandan national.
>
> Father was directed by the court in August 2019 to provide a statement / make representations however father did not have UK representatives at the time and the application for public funding although sought had not been secured in time for the hearing on 6 September 2019 and the application to adjourn the hearing on his behalf was not granted."

3. On 30 April 2020 I gave directions and set this matter down for a final hearing with a time estimate of half a day, all parties confirming that the matter was suitable to be dealt with by way of submissions. Due to the current COVID-19 public health emergency, the final hearing was conducted remotely. In addition to hearing oral submissions I have read the trial bundles and the documents prepared by the advocates. Given the limitations on delivering judgment over a remote link, I reserved judgment.

BACKGROUND

4. Within the context of the birth father's clearly expressed grounds for revocation, namely a fundamental breach of natural justice grounded in a failure to involve him at all in the care and placement proceedings and a failure to involve him sufficiently in the adoption proceedings, the necessary summary of the background to this matter can be limited largely, although not exclusively, to the procedural history of this matter.

5. The local authority issued care proceedings in respect of Z on 24 May 2017. It is important to note the history provided by the birth mother to the local authority regarding the circumstances of Z's conception. During the course of the care and placement proceedings the mother initially refused to provide the local authority with any details of the identity of Z's father. On 27 May 2017 HHJ Penna accordingly directed the local authority to file and serve:

> "A statement from the Red Cross workers involved with the mother, to include contact details for the person who had care of the child in Uganda, how the child was collected by / from whom, any copy documents held by the Red Cross confirming the child's identity, any proffer of the child's identity held or obtained by the Red Cross, and details of any involvement with the child since arrival in the UK including details of the events which led to a referral to Children's Services and any other concerns."

6. Pursuant to this direction, which I note makes no specific reference to Z's birth father, on 12 June 2017 the local authority received correspondence from the Red Cross (which organisation had been responsible for reuniting Z and the birth mother in the United Kingdom following the mother leaving Uganda without Z and seeking asylum in this jurisdiction) reporting that the mother had arrived in the United Kingdom nervous and agitated, had advised that Z was the product of a rape and had provided no information regarding Z's father. In her statement in support of the birth father's application to revoke the adoption order the mother now contends that she did not provide the birth father's contact details because she did not have them and did not know his whereabouts.

7. The order of HHJ Penna of 29 June 2017 records that the mother also objected to members of her family in Uganda being informed of the proceedings and refused to provide contact details for members of her family in that jurisdiction. Within this context, the local authority made efforts to contact the maternal grandmother, again through the Red Cross. Once the maternal grandmother's details were obtained, the social worker wrote to the maternal grandmother on 20 July 2017 advising her of the proceedings and asking whether she wished to be assessed as a potential carer. The maternal grandmother subsequently put herself forward to be assessed as a potential carer for Z. The letter of 20 July 2017 does not seek details of the birth father from the maternal grandmother.

8. In September 2017, during her social work assessment, the mother purported to reveal further information regarding Z's birth father. The birth mother advised that the birth father was a 70 year old man who she had been forced to marry by way of a polygamous marriage. She further alleged that were Z to be returned to Uganda there was a chance that her birth father would be made aware and would abduct Z, the birth mother asserting that the birth father was a dangerous man. The birth mother asserted that prior to the birth of Z she had suffered two miscarriages during her forced marriage, in respect of which the birth father became angry and his other wives accused her of having demons. The birth mother further asserted that Z had had to be cared for by the maternal grandmother following her birth for Z's own protection. The birth mother asserted that, ultimately, she had escaped what she described as her traumatic marriage. She again asserted that the birth father would present a risk to Z were Z to be returned to Uganda although she did not specify the nature of that risk. The assessment of the birth mother summarises the information she provided in respect of the birth father as follows:

> "[The birth mother] describes Z's father as a 70 year old male who is of Muslim faith. [The birth mother] explained that she was married into a polygamous marriage and Z's birth father already had many wives and children. [The birth mother] has failed to give a physical description of him but only reveals she is fearful of him. [The birth mother] only reports that he was a businessman and had wealth in the community. [The birth mother] reported that she was married to an elder at the request of her paternal family. She was very unhappy following her marriage and explained how she would attempt to climb over the fence as the property where she lived was gated and secured."

9. Within the foregoing context, the birth mother provided the local authority with a handwritten birth certificate that identified the birth father as "XH" rather than HX. Through the Skeleton Argument prepared by Ms Omideyi, the birth father asserts that much of the information provided by the mother in respect of him was inaccurate. In his statement in support of his application to revoke the adoption order, the birth father further asserts that he and the birth mother had an arranged marriage and had met on the day of the wedding. The birth father points out that he is not in his seventies, denies that he is a dangerous individual and denies that Z was conceived as the result of rape.

10. On 29 September 2017 the local authority wrote to the High Commission of the Republic of Uganda in London informing them of the care proceedings and the care plan for Z, which by that date was one of permanency by way of adoption. The local authority advised the High Commission of a forthcoming hearing in November 2017 at which they would be able to make representations. Ms Doyle conceded during her oral submissions that the local authority did not make any specific request of the Ugandan High Commission for assistance in locating the birth father as named on Z's handwritten birth certificate and described in some detail by the mother during her social work assessment. Indeed, the letter makes no mention of the birth father at all. No response was received from the Ugandan High Commission. Within this context, the order of HHJ Penna dated 9 November 2017 recorded that:

> "A copy of a handwritten birth certificate provided by the mother identifies the father as XH. He has not been given notice of these proceedings as his whereabouts remain unknown."

11. On 17 November 2017 and 17 January 2018 solicitors in Uganda representing the maternal grandmother wrote to the local authority and HHJ Penna respectively, making representations regarding the desire of the maternal grandmother to care for Z. Neither of those letters made any reference to the birth father. On 1 December 2017 local authority replied to the letter from the maternal grandmother's Ugandan solicitors of 17 November 2017 requesting contact details for the maternal grandmother. Once again, the letter does not request contact details for the birth father. In the circumstances, whilst the local authority contends that the assessment of the maternal grandmother completed on 17 January 2018 contains a brief description of a discussion regarding the father, it does not appear that the maternal grandmother was *ever* asked by the local authority in terms to assist with any details she could provide regarding the identity and whereabouts of the birth father named on Z's handwritten birth certificate and described by the birth mother during her social work assessment.

12. On 25 May 2018 HHJ Woodward made a care order and a placement order. Those orders were made on the basis that all reasonable steps had been taken to locate and contact the birth father. At paragraph [3] of her judgment, HHJ Woodward recorded that:

> "The mother states that the father of Z is named XH. He has played no role in these proceedings as the mother has provided insufficient information upon which to identify his whereabouts in Uganda. He was, according to the mother, her husband of a forced marriage and likely now to be in his late 70s."

13. The birth mother sought permission to appeal from the Court of Appeal. On 5 September 2018 Lord Justice Jackson refused the mother permission to appeal the care and placement orders. Z was placed with her prospective adopters on 8 January 2019.

14. On 27 June 2019, and some four months prior to the adoption order being made, the court was sent a letter dated 25 June 2019 by solicitors in Uganda instructed on behalf of the birth father. That letter indicated that the birth father sought the return of Z to his care in Uganda. The birth father contends that June 2019 was the first point at which he became aware that the birth mother had brought Z to the United Kingdom and that adoption proceedings were ongoing in respect of her. In his statement the birth father asserts that he found out that the birth mother was in the United Kingdom through information provided by a maternal uncle. The court sent the letter from the birth father's Ugandan solicitors to local authority on 28 June 2019. The father's Ugandan solicitors were given notice of a hearing on 3 July 2019 of the mother's application to revoke the placement order. No application was forthcoming from the father or his solicitors at this time.

15. On 3 July 2019 the court received a letter from the High Commission of the Republic of Uganda requesting the suspension of the proceedings in respect of Z. The letter stated that the birth father was seeking the return of Z to his care in Uganda. It is clear from the terms of the letter from the High Commission that that letter was prompted by the birth father's Ugandan solicitors. However, again no application was made at this time by the father. On 3 July 2019 HHJ Woodward dismissed the birth mother's application to revoke the placement order.

16. On 4 July 2019 the court wrote to the birth father's Ugandan solicitors requesting, as a matter of urgency, the address of the birth father in Uganda in order to facilitate the service of the paperwork in the adoption proceedings. Whilst the birth father now contends that he provided his address through his Ugandan solicitors, no address for the birth father was in fact provided by them at this point or subsequently.

17. In response to the letter from the Ugandan High Commission dated 3 July 2019, on 9 July 2019 HHJ Woodward caused a letter to be written to the High Commission setting out the history of the matter and providing them with notice of a further hearing in the proceedings on 6 September 2019. The letter from the court stated that if *either* birth parent sought permission to oppose the making of the adoption order HHJ Woodward would give directions. The letter further advised that should a representative of the High Commission wish to attend the hearing on 6 September 2019 they could do so. The letter was copied to all parties and to the birth father's solicitors in Uganda. Further, HHJ Woodward directed court staff to again request from the birth father's

Ugandan solicitors either confirmation of the birth father's address for service or confirmation that the birth father's Ugandan solicitors would accept service of notice of the adoption application. On 12 July 2019 the birth father's solicitors in Uganda confirmed that they would accept service of the adoption proceedings on behalf of the birth father. An address for the birth father himself was again not provided.

18. Following the birth mother indicating that she sought permission to oppose the making of an adoption order, HHJ Woodward listed the case on her own motion on 7 August 2019. The birth mother was represented by leading counsel. The birth father did not seek to attend, whether remotely or otherwise and no representative attended on his behalf. No application had been made by the birth father or his representatives by this date and no further communication had been received either from the Ugandan High Commission or the birth father or his legal representatives. Notwithstanding this, and in circumstances where the birth father's solicitors had indicated in June 2019 that the birth father sought the return of Z to Uganda, HHJ Woodward and made the birth father a party to the proceedings and directed him to file and serve a witness statement setting out his position.

19. Between 9 August 2019 and 22 August 2019 the local authority made repeated attempts to contact the solicitors in Uganda who had, on 25 June 2019, advised that they were instructed on behalf of the birth father and on 12 July 2019 that they would accept service on this behalf. The local authority attempted communications by both email and telephone, which communications made clear that the birth father had been made a party to the proceedings, that service would take place through his solicitors and by email and that the birth father had been directed to file and serve a statement. The local authority did not receive any response from the Ugandan solicitors instructed by the birth father and the birth father failed to file and serve the statement. In his statement filed in support of his application to revoke the adoption order, the birth father contends that he received no direct contact from his Ugandan solicitors during this period.

20. The solicitors in Uganda subsequently sent a letter to the court claiming that the emails sent by the local authority between 9 August 2019 and 22 August 2019 had never been received. However, those emails were sent securely via Egress and show as having been delivered but not opened. It is also clear that certain of the emails sent by the local authority to the solicitors in Uganda *were* received as they elicited a response (for example the emails sent enquiring whether the birth father intended to attend the hearing on 6 September 2019 and requesting whether the birth father needed an interpreter, which elicited a response from the solicitors in Uganda advising the birth father had engaged English solicitors). In addition, the local authority followed up a number of its email communications with telephone calls to the solicitors in Uganda, which telephone calls were answered. In any event, it is clear from the email correspondence before the court that the solicitors in Uganda were receiving correspondence from the court as the solicitors in Uganda had, as I have noted, responded to the court on 12 July 2019 confirming that they would accept service on behalf of the father. The birth father's Ugandan solicitors were also put on notice of the hearing on 6 September 2019 by reason of their being copied into the letter from the court to the Ugandan High Commission of 9 July 2019.

21. On 30 August 2019 the local authority filed a statement from HE in response to the birth mother's application to oppose the making of an adoption order. It is noteworthy that that statement inaccurately records the position with respect to the details available

regarding the birth father during the care and placement proceedings. At paragraph [6.1] of the statement HE asserts that the birth mother failed to provide any details of Z's father during the care and placement proceedings. This is incorrect, the birth mother having in September 2017 provided the local authority with a handwritten birth certificate that identified the father as "XH". More concerning still, having thereafter wrongly asserted that the mother provided a name for the birth father during the adoption proceedings, HE asserts that as at 30 August 2019 "The local authority have not received any further information or correspondence from the alleged birth father." These errors are repeated at other points in HE's statement.

22. On 5 September 2019, the father's Ugandan solicitors provided confirmation that the birth father now had English solicitors acting for him, which solicitors informed the local authority that they were in the process of making an application on the birth father's behalf for public funding. At 1534hrs on 5 September the birth father's English lawyers contacted the court to request that the hearing on 6 September 2019 to consider the birth mother's application for permission to oppose the adoption order be adjourned to enable the father to apply for legal aid. At the hearing of the mother's application on 6 September 2019 HHJ Woodward refused the birth father's application for an adjournment on the grounds that (a) no response had been received from the birth father or those acting on his behalf despite repeated efforts since the hearing on 7 August 2019, (b) that the birth father had failed to provide any contact details despite repeated requests, (c) that neither birth father, nor the solicitors acting on his behalf, had sought to communicate with the local authority or with the court until less than twenty-four hours before the hearing, (d) that the birth father had failed to comply with the direction to file and serve a statement of evidence setting out his position and (e) that the birth father had made no application of his own nor responded to the notice of application issued by the birth mother.

23. Following a hearing on 6 September 2019, HHJ Woodward circulated a draft judgment dated 11 September 2019. On 12 September 2019 a copy of the draft judgment was sent to the father's Ugandan solicitors (eliciting the letter detailed above in which they alleged they had not received any email correspondence from the local authority). On 16 September 2019 HHJ Woodward handed down judgment refusing the application to adjourn the hearing and refused the birth mother's application for permission to oppose the making of an adoption order. In the judgment, HHJ Woodward treated the birth father as having parental responsibility for Z by reason of his being married to the birth mother at the time of Z's birth. The learned judge expressed herself to be satisfied that as at June 2019 when the letter from birth father's Ugandan solicitors was received by the court no information concerning the birth father's whereabouts was known either to the local authority or to the court. HHJ Woodward further expressed herself as satisfied that between 28 June 2019 and 6 September 2019 the birth father did nothing to advance his case with respect to Z and nothing to communicate with the court or the parties. As I have noted, the learned judge likewise expressed herself satisfied that, between 7 August 2019 and 6 September 2019, no response had been received from the birth father or those acting on his behalf despite repeated efforts since the hearing on 7 August 2019, that the birth father had failed to provide any contact details despite repeated requests, that neither birth father nor the solicitors acting on his behalf had sought to communicate with the local authority or with the court until less than twenty-four hours before the hearing, that the birth father had failed to comply with the direction to file and serve a statement of evidence setting out his position and that the

father had made no application of his own nor responded to the notice of application issued by the mother. Within this context, the learned judge concluded as follows in respect of the father at paragraph [101] of her judgment:

> "The only other change since the orders were made is that Z's father has been made aware of the proceedings and expressed, through solicitors and the Ugandan High Commission, his wish for Z to return to his care. Since his solicitor's letter to the court received on 28 June 2019, however, he has done nothing to engage with proceedings nor shown any commitment to Z or the court process. He has not made any application in his own right, has failed to file a statement as directed or even provide his contact details so that the local authority could make contact with him."

24. On 27 September 2019 the birth mother applied to HHJ Woodward for permission to appeal the refusal of her application for permission to oppose the making of the adoption order. The mother failed to attend and was not represented. The birth father did not attend and was not represented. Permission to appeal was refused in any event.

25. On 27 September 2019 the birth father was granted public funding by way of an emergency certificate, subject to means testing. However, no applications were issued on his behalf, including any application for permission to appeal the refusal to adjourn the hearing on 6 September 2019 nor the findings made by HHJ Woodward in respect of the birth father's level of engagement, the birth father having been awarded an emergency public funding certificate within the 21 day time limit for lodging a notice of appeal with respect to the 16 September 2019 judgment.

26. On 11 October 2019 the court listed the matter for a final adoption hearing on 18 October 2019, subject to any further application for permission to appeal being made to the Court of Appeal by the birth mother or the birth father. On 16 October 2019 the mother renewed her application for permission to appeal to the Court of Appeal. Once again, and notwithstanding the fact that the birth father was now in receipt of emergency public funding, no applications were made by the birth father, whether for permission to appeal or otherwise.

27. As a result of the birth mother renewing her application for permission to appeal to the Court of Appeal the final adoption hearing was adjourned to 8 November 2019 pending the outcome of the birth mother's permission application. Once again, the birth father made no applications of his own. On 7 November 2019 Lady Justice King refused the birth mother's application for permission to appeal. On 8 November 2019 HHJ Woodward made an adoption order in respect of Z.

28. The birth father was granted a substantive public funding certificate on 27 January 2020. On 6 February 2020 the birth father applied, erroneously, to revoke the care and placement orders that had been made in respect of Z. A day later, on 7 February 2020 the birth mother applied for an order for post adoption contact. That latter application has already been dealt with by HHJ Woodward on 16 April 2020. On that date HHJ Woodward indicated that the birth father's application to revoke the care and placement orders was misconceived and counsel for the father confirmed his intention to apply to revoke the adoption order. As I have noted, that application was issued on 27 April 2020.

THE LAW

29. The only statutory ground for revocation of an adoption order under the Adoption and Children Act 2002 is not applicable in this case. The law governing the circumstances in which a court may otherwise, pursuant to the inherent jurisdiction of the High Court, revoke a lawfully granted adoption order under the inherent jurisdiction of the High Court is set out in a number of well-known authorities. Before turning to those authorities it is important to note that, contrary to a somewhat flippant submission made by Mr Cryne on behalf of the child, the inherent jurisdiction does *not* in practice confer upon the High Court an unconstrained power. Whilst the jurisdiction of the court under the inherent jurisdiction is *theoretically* unlimited, there are, in fact, far-reaching limitations on the exercise of the jurisdiction (see for example *Re X (A Minor)(Wardship: Restriction on Publication)* [1975] All ER 697 at 706G). Within this context, the courts discretion under the inherent jurisdiction to revoke a lawfully made adoption order is severely curtailed.

30. In *Re B (Adoption: Jurisdiction to Set Aside)* [1995] Fam 239 the Court of Appeal noted that the act of adoption is final, effecting a permanent change in the status of the child and the parties. At p. 245 Swinton Thomas LJ noted as follows:

> "An adoption order has a quite different standing to almost every other order made by a court. It provides the status of the adopted child and of the adoptive parents. The effect of an adoption order is to extinguish any parental responsibility of the natural parents. Once an adoption order has been made, the adoptive parents stand to one another and the child in precisely the same relationship as if they were his legitimate parents, and the child stands in the same relationship to them as to legitimate parents. Once an adoption order has been made the adopted child ceases to be the child of his previous parent and becomes the child for all purposes of the adopters as though he were their legitimate child."

And Lord Bingham MR (as he then was) observed at p. 251 that:

> "The act of adoption has always been regarded in this country as possessing a peculiar finality. This is partly because it affects the status of the person adopted, and indeed adoption modifies the most fundamental of human relationships, that of parent and child. It effects a change intended to be permanent and concerning three parties. The first of these are the natural parents of the adopted person, who by adoption divest themselves of all rights and responsibilities in relation to that person. The second party is the adoptive parents, who assume the rights and responsibilities of parents in relation to the adopted person. And the third party is the subject of the adoption, who ceases in law to be the child of his or her natural parents and becomes the child of the adoptive parents."

31. Whilst these observations were made in the context of the provisions of the Adoption Act 1976, the coming into force of the Adoption and Children Act 2002, whilst introducing a number of reforms, did not change the fundamental character of adoption or the legal effect of an adoption order. Within this context it also remains true under the Adoption and Children Act 2002 that, as observed by Lord Bingham MR (as he then was) in *Re B (Adoption: Jurisdiction to Set Aside)* at p. 253:

> "An adoption order is not immune from any challenge. A party to the proceedings can appeal against the order in the usual way. The authorities show, I am sure correctly, that where there has been a failure of natural justice, and a party with a right to be heard on the application for the adoption order has not been notified of the hearing or has not for some other reason been heard, the court has jurisdiction to set aside the order and so make good the failure of natural justice. I would also have little hesitation in holding that the court could set aside an adoption order which was shown to have been obtained by fraud."

32. Lord Bingham observed in *Re B (Adoption: Jurisdiction to Set Aside)* that the courts have been *very* strict in their refusal to allow adoption orders to be challenged, otherwise than by way of appeal. In giving examples of the types of failure in natural justice that might justify the revocation of an adoption order, at pp. 245-246 in *Re B (Adoption: Jurisdiction to Set Aside)* Swinton Thomas LJ gave the following examples:

> "There are cases where an adoption order has been set aside by reason of what is known as a procedural irregularity: see *In re F.(R.) (An Infant)* [1970] 1 Q.B. 385, *In re R.A. (Minors)* (1974) 4 Fam. Law 182 and *In re F. (Infants)(Adoption Order: Validity)* [1977] Fam. 165. Those cases concern a failure to effect proper service of the adoption proceedings on a natural parent or ignorance of the parent of the existence of the adoption proceedings. In each case the application to set aside the order was made reasonably expeditiously. It is fundamental to the making of an adoption order that the natural parent should be informed of the application so that she can give or withhold her consent. If she has no knowledge at all of the application then, obviously, a fundamental injustice is perpetrated. I would prefer myself to regard those cases not as cases where the order has been set aside by reason of a procedural irregularity, although that has certainly occurred, but as cases where natural justice has been denied because the natural parent who may wish to challenge the adoption has never been told that it is going to happen. Whether an adoption order can be set aside by reason of fraud which is unrelated to a natural parent's ignorance of the proceedings was not a subject which was relevant to the present appeal...As the case law stood, certainly in 1976, the powers of the court to set aside an adoption order as known to Parliament would, in my view, have been limited to the power to set aside such an order on the basis of a breach of natural justice such as I have described above, and not an inherent power to set aside an adoption order by reason of a mistake or misrepresentation."

And at p. 248

> "There is no case which has been brought to our attention in which it has been held that the court has an inherent power to set aside an adoption order by reason of a misapprehension or mistake. To allow considerations such as those put forward in this case to invalidate an otherwise properly made adoption order would, in my view, undermine the whole basis on which adoption orders are made, namely that they are final and for life as regards the adopters, the natural parents, and the child. In my judgment Mr. Holman, who appeared as *amicus curiae*, is right when he submits that it would gravely damage the lifelong commitment of adopters to their adoptive

> children if there is a possibility of the child, or indeed the parents, subsequently challenging the validity of the order."

33. The courts have continued to endorse the approach set out in *Re B (Adoption: Jurisdiction to Set Aside)*, limiting the operation of the court's inherent jurisdiction to revoke an adoption order to those cases in which a failure of natural justice has occurred. In *Re K (adoption: foreign child)* [1997] 2 FLR 221 at p. 228 Butler-Sloss LJ (as she then was) observed that:

> "The law seems to me to be clear that there are cases where a fundamental breach of natural justice will require a court to set an adoption order aside"

34. More recently in *Re Webster v Norfolk County Council* [2009] 2 All ER 1156 the Court of Appeal (noting that under the Adoption and Children Act 2002 that adoption is the process whereby a child becomes a permanent and full member of a new family, and is treated for all purposes as if born to the adopters and that the court will be as a matter of public policy to set aside adoption orders) reiterated at [149] that:

> "[149] This is a case in which the court has to go back to first principles. Adoption is a statutory process. The law relating to it is very clear. The scope for the exercise of judicial discretion is severely curtailed. Once orders for adoption have been lawfully and properly made, it is only in highly exceptional and very particular circumstances that the court will permit them to be set aside."

And at [163] that:

> "[163] The question, therefore, is whether or not a substantial miscarriage of justice, assuming that this is what has occurred, is or can be sufficient to enable the adoption orders in the present case to be set aside."

35. With respect to what might be a substantial miscarriage of justice sufficient to justify the revocation of an adoption order, in *Re Webster v Norfolk County Council* Wall LJ (as he then was) indicated that, given the public policy considerations relating to adoption and the authorities to which I have referred, even a serious injustice suffered by a birth parent will not justify the revocation of an adoption order. As I have noted, in this context, Wall LJ was clear that only a highly exceptional and very particular circumstance could lead to such an outcome. Thus, in *Re Webster*, the fact, articulated by Wall LJ at [2] and [3], that the children in that case had been denied the opportunity to argue that they should grow up together with their parents as a family in breach of the Art 8 rights *and* the fact that the parents had been wrongly accused of physically abusing one of their children and three of their children had been removed wrongly and permanently from their care, did *not* amount to sufficient justification to revoke the adoption orders in that case.

36. The foregoing approach was endorsed by Sir James Munby P in *Re O (A Child)(Human Fertilisation and Embryology: Adoption Revocation)* [2016] 4 WLR 148 in which the former President noted at [27] that:

> "[27] There is no need for me to embark upon any detailed analysis of the case law. For present purposes it is enough to draw attention to a few key

> propositions: (i) Under the inherent jurisdiction, the High Court can, in an appropriate case, revoke an adoption order. In relation to this jurisdictional issue I unhesitatingly prefer the view shared by Bodey J in *In re W (Inherent Jurisdiction: Permission Application: Revocation and Adoption Order)*, para 6, and Pauffley J in *PK v K*, para 4, to the contrary view of Parker J in *In re PW (Adoption)*, para 1. (ii) The effect of revoking an adoption order is to restore the status quo ante: see *In re W (Adoption Order: Set Aside and Leave to Oppose)*, paras 11–12. (iii) However, "The law sets a very high bar against any challenge to an adoption order. An adoption order once lawfully and properly made can be set aside 'only in highly exceptional and very particular circumstances'": *In re C (A Child) (Adoption: Placement Order)*, para 44, quoting *Webster v Norfolk County Council*, para 149. As Pauffley J said in *PK v K*, para 14: "public policy considerations ordinarily militate against revoking properly made adoption orders and rightly so." (iv) An adoption order regularly made, that is, an adoption order made in circumstances where there was no procedural irregularity, no breach of natural justice and no fraud, cannot be set aside either on the ground of mere mistake (*In re B (Adoption: Jurisdiction to Set Aside)*) or even if there has been a miscarriage of justice (*Webster v Norfolk County Council*). (v) The fact that the circumstances are highly exceptional does not of itself justify revoking an adoption order. After all, one would hope that the kind of miscarriage of justice exemplified by *Webster v Norfolk County Council* is highly exceptional, yet the attempt to have the adoption order set aside in that case failed."

37. It is also clear that the emotional impact on the birth parent will not constitute a highly exceptional circumstance and that adoption orders will not be disturbed even if, as in *Re B* they leave the adopted person in an adoptive placement inconsistent with their ethnic identity (see *G v G (Parental Order: Revocation)* [2013] 1FLR286 at [33] and *M (minors) (adoption)* [1991] 1 FLR 458).

38. In summary, in determining whether the birth father should succeed in his application to revoke the placement order the following legal principles fall to be considered and applied to the facts of this case:

    i) An adoption order effects a change that is, and is intended to be legally permanent. The effect of an adoption order is to extinguish any parental responsibility of the natural parents. Once an adoption order has been made, the adoptive parents stand to one another and the child in precisely the same relationship as if they were his legitimate parents, and the child stands in the same relationship to them as to legitimate parents. Once an adoption order has been made the adopted child ceases to be the child of his previous parent and becomes the child for all purposes of the adopters as though he were their legitimate child.

    ii) There are strong public policy reasons for not permitting the revocation of adoption orders once made, grounded in the nature and intended effect of an adoption order but also in the grave damage that would be done to the lifelong commitment of adopters to their adoptive children if there was a possibility of the child, or indeed the parents, subsequently challenging the validity of the order and in the dramatic adverse effect on the number of prospective adopters available if prospective adopters thought that the natural parents could, even in

limited circumstances, secure the return of the child after the adoption order was made.

iii) Within this context, the courts discretion under the inherent jurisdiction to revoke a lawfully made adoption order is severely curtailed and can only be exercised highly exceptional and very particular circumstances.

iv) Those highly exceptional circumstances must comprise more than mistake or misrepresentation or serious injustice and amount to a *fundamental* breach of natural justice.

SUBMISSIONS

The Birth Father

39. In careful, well-structured and well-considered submissions Ms Omideyi submits that there are two aspects of this matter that constitute highly exceptional circumstances justifying the court exercising its jurisdiction to revoke the adoption order made by HHJ Woodward in November 2019.

40. First, Ms Omideyi submits that there was a fundamental breach of natural justice in the conduct of the proceedings that resulted in a care order and a placement order being made in respect of Z. Ms Omideyi submits that this fundamental breach of natural justice rests on the fact that, in her submission, the local authority and the court failed to discharge the duty to involve the birth father in the proceedings, in breach of both his Art 6 and Art 8 rights. Within this context, in essence Ms Omideyi deploys on behalf of the birth father the argument deployed by the parents in *Re Webster*, namely that by reason of the fact that, as the father contends, the making of care and placement orders represented a serious miscarriage of justice (by reason of a failure by the local authority and the court to properly involve him that process) the circumstances are sufficiently highly exceptional to justify the revocation of the subsequent adoption order.

41. With respect to her first submission concerning the lack of procedural probity in the care and placement proceedings, Ms Omideyi points to a duty under the FPR 2010 to give the birth father notice of the care and placement proceedings. FPR r 12.3(1) requires every person who the applicant local authority believes to have parental responsibility for the subject child to be joined as a respondent to care proceedings. Pursuant FPR r 12.8 following the issue of proceedings notice must be given to all respondents. Further, pursuant to FPR r 12.4(2) the applicant must also give notice to any person who holds or is believed to hold parental responsibility for the child under the law of another State where that parental responsibility subsists in accordance with Art 16 of the 1996 Hague Convention. In this context, FPR r 12.4(3) imposes on the applicant and the other respondents to the proceedings to provide to the court such details as they possess as to the whereabouts of any person they believe to hold parental responsibility for the child. With respect to proceedings for a placement order, pursuant to FPR r 14.3 every parent with parental responsibility will be a respondent to an application for a placement order and FPR r 14.4 again requires notice be given to any person who holds or is believed to hold parental responsibility for the child under the law of another State and imposes a duty on the applicant and the other respondents to

the proceedings to provide to the court such details as they possess as to the whereabouts of any person they believe to hold parental responsibility for the child.

42. Within this context, Ms Omideyi submits that the evidence before the court demonstrates that, contrary to the conclusion of HHJ Woodward that the local authority had taken all reasonable steps within the care and placement proceedings to identify, and ascertain the whereabouts of the father, the local authority in fact had not done so and in particular had not carried out enquiries of its own in this regard. Ms Omideyi submits that, as a result, the birth father was prevented from properly participating in the proceedings, prevented from being assessed and that Z was denied the opportunity of being cared for by her paternal family, in breach of her and the birth father's Art 8 rights.

43. Second, and in any event, Ms Omideyi submits that there was a further fundamental breach of natural justice in that both the court and the local authority failed to discharge the duty to involve the birth father sufficiently in the subsequent adoption proceedings, after he had made contact with the local authority in June 2019 and made clear he wished to care for Z in Uganda, and failed to allow him to participate effectively in those proceedings, again in breach of his Art 6 and Art 8 rights. Within this context, Ms Omideyi submits that the evidence before the court demonstrates plainly that the steps taken to involve the birth father in the adoption proceedings were ineffective. Once again, Ms Omideyi submits that this constitutes highly exceptional circumstances sufficient to justify the revocation of the adoption order.

The Birth Mother

44. The birth mother supports the birth father's application. On behalf of the birth mother, Mr Green submits that the court should pay particular regard to the fact that the mother contends that the local authority failed to give her notice of the fact that Z was being placed for adoption, lending weight to the birth father's assertion that the local authority did not take sufficient steps to ensure his involvement. Mr Green also seeks to emphasise the evidence contained in the birth mother's statement asserting that Z had extensive contact with the birth father and her half siblings when she was in Uganda and retains fond memories of these interactions.

The Local Authority

45. The local authority opposes the application by the birth father. On behalf of the local authority, Ms Doyle submits that the evidence before the court demonstrates that HHJ Woodward's conclusion in the care and placement proceedings that the local authority had taken all reasonable steps to identify and locate the birth father was plainly correct. In this regard, Ms Doyle relied on the contents of the statement of the local authority solicitor, which statement I directed the local authority to file in advance of this hearing. Within the context of the steps detailed in that statement, Ms Doyle submits that the local authority complied with the direction of the court to undertake the appropriate enquiries to identify and locate the birth father and that, accordingly, there was no fundamental breach of natural justice in the care and placement proceedings.

46. Further, and in any event, Ms Doyle submits that in the context of the *adoption* proceedings, the birth father was on notice of the adoption proceedings from at the latest July 2019, was made a party to those proceedings by HHJ Woodward in August 2019,

was given the opportunity to file and serve evidence in those proceedings and the opportunity to participate in the final hearing. Ms Doyle further points to the fact that between 28 June 2019 and 27 September 2019 the birth father did not make any applications through his Ugandan solicitors and that, following the grant of emergency public funding on 27 September 2019 the birth father did not make any applications, whether for permission to oppose the adoption order or otherwise, through his English solicitors ahead of the final adoption hearing on 8 November 2019. Within this context, Ms Doyle submits that the birth father's contention that he was unable to participate effectively in the proceedings to the extent that a fundamental breach of natural justice amounting to highly exceptional circumstances simply cannot be made out.

The Children's Guardian

47. The Children's Guardian likewise opposes the application to revoke the adoption order. Mr Cryne invites the courts attention to the judgment of HHJ Woodward of 16 September 2019 in which HHJ Woodward sets out the steps taken to involve the birth father in the adoption proceedings. Within this context, on behalf of the child Mr Cryne adopts the submissions made by Ms Doyle on behalf of the local authority and contends that the argument of the birth father that a fundamental breach of natural justice amounting to highly exceptional circumstances simply cannot be made out on the evidence before the court.

DISCUSSION

48. Having considered the documentation before the court, the Skeleton Arguments helpfully provided by the advocates and having listened to the oral submissions made on behalf of the parties, during which the father has had the opportunity fully to argue his application, I am satisfied that the birth father's application to revoke the adoption order must be dismissed. My reasons for so deciding are as follows.

49. As is clear from the authorities that I have set out above, the adoption order in respect of Z is intended to be legally permanent. The effect of the adoption order made on 8 November 2019 is to extinguish the parental responsibility of the birth mother and birth father. The adoptive parents are now Z's legal parents and Z has ceased to be the child of the birth mother and birth father. Further, and within this context, now the adoption order has been made there is a public interest in not permitting the revocation of that adoption order in respect of Z for the reasons I have set out above. I must bear in mind that this public interest is a robust and durable one given the strong interest in encouraging the lifelong commitment of adopters to their adoptive children. The consequences of undermining this, both for individual adoptive placements and on the supply of prospective adopters available, by allowing the revocation of a lawfully made adoption order absent a situation of highly exceptional circumstances would be grave. Within this context, as set out above, the birth father has a very high hurdle to surmount in seeking to persuade the court to revoke the adoption order. Namely, one of high exceptionality.

50. Dealing first with the birth father's argument that the failure to involve him in the care and placement proceedings was a fundamental breach of natural justice and thus such a situation of high exceptionality, beyond the requirements of the FPR 2010 with respect to party status and notice in proceedings for a care order under the Children Act 1989 and proceedings for a placement order under the Adoption and Children Act 2002,

it is well established that within the context of care and placement proceedings a local authority is required to make all reasonable efforts or take all reasonable steps to locate a father whose whereabouts are not known. Such a requirement is consistent with key principles of the Children Act 1989 and the Adoption and Children Act 2002 that children are generally best looked after within their own family, save where that outcome is not consistent with their welfare, and that a care order on a plan for adoption is appropriate only where no other course is possible in the child's interests. In this context, the courts are often required to decide whether, in a given set of public law proceedings, the local authority has made all reasonable efforts or taken all reasonable steps to locate a father whose whereabouts are unknown.

51. Further, pursuant to FPR r 16.20 the duties of the Children's Guardian are articulated in the rules as follows:

> "**Powers and duties of the children's guardian**
>
> 16.20
>
> (1) The children's guardian is to act on behalf of the child upon the hearing of any application in proceedings to which this Chapter applies with the duty of safeguarding the interests of the child.
>
> (2) The children's guardian must also provide the court with such other assistance as it may require.
>
> (3) The children's guardian, when carrying out duties in relation to specified proceedings, other than placement proceedings, must have regard to the principle set out in section 1(2) and the matters set out in section 1(3)(a) to (f) of the 1989 Act as if for the word 'court' in that section there were substituted the words 'children's guardian'.
>
> (4) The children's guardian, when carrying out duties in relation to proceedings to which Part 14 applies, must have regard to the principle set out in section 1(3) and the matters set out in section 1(4)(a) to (f) of the 2002 Act as if for the word 'court' in that section there were substituted the words 'children's guardian'.
>
> (5) The children's guardian's duties must be exercised in accordance with Practice Direction 16A.
>
> (6) A report to the court by the children's guardian is confidential."

52. PD16A further articulates the duties of the Children's Guardian, which duties include at paragraph 6.1 making such investigations as are necessary to carry out the children's guardian's duties and must, in particular contacting or seeking to interview such persons as the children's guardian thinks appropriate or as the court directs. Further, pursuant to paragraph 6.6(f) the Children's Guardian must advise on any other matter on which the Children's Guardian considers that the court should be informed. Within the foregoing context, pursuant to his or her obligation to act on behalf of the child with the duty of safeguarding the interests of the child, it must be incumbent on a Children's Guardian to satisfy themselves, independent of the local authority, that all reasonable

steps have been taken in a given case to identify and locate a parent in circumstances where there has been difficulty doing so.

53. Whilst HHJ Woodward proceeded to determine the care and placement proceedings in 2018 on the basis that all reasonable steps had been taken to identify and locate the birth father, and careful as I am to remind myself that it not for this court to go behind the conclusion reached by HHJ Woodward at that time and on the information then available to her, on the information *now* available to this court in considering the application to revoke the adoption orders, it is clear that some justified criticism can be levelled at the local authority and the Children's Guardian (who was not at that time Mr Yartey) regarding the sufficiency of the enquiries undertaken to identify and locate the birth father and provide him with notice of the care and placement proceedings. In particular, the bold assertion in Ms Doyle's Skeleton Argument that, in the context of those proceedings, "the local authority made repeated efforts to identify the whereabouts of the [birth] father and engage him in some form of assessment" is entirely unsupported by the evidence.

54. Rather, the papers before the court demonstrate a marked lack of rigor and urgency during the care and placement proceedings with respect to the need to ascertain the identity and whereabouts of the birth father and a pre-occupation with the birth mother's account to the exclusion of any efforts by the local authority or the then Children's Guardian independently to ascertain that information. By September 2017 the local authority and the Children's Guardian had a birth certificate for Z stating the name of her birth father, a description from the birth mother as to the birth father's occupation which, it transpires, was accurate and a clear indication from the birth mother that the maternal family had been involved in, or were at least aware of, the arrangements for the marriage of the birth mother to the birth father. Notwithstanding this, no attempt was made by the local authority or the Children's Guardian to request the Ugandan authorities or the Ugandan High Commission in London to assist in identifying the man named on the birth certificate as "XH", the birth father asserting in his statement that he is both registered with the Ugandan Ministry of Internal Affairs and holds a Ugandan passport and driving licence. Nor does it appear that the maternal grandmother was ever asked by the local authority or the Children's Guardian to assist by providing any details she could provide regarding the identity and whereabouts of the birth father, named as he was on Z's birth certificate and described as he was by the birth mother. These would have been "reasonable steps" to take in the circumstances and the fact that such enquiries concerned a foreign national did not absolve the local authority and the Children's Guardian from attempting them independent of the position adopted by the mother. Whilst I accept that the local authority and the Children's Guardian will have been given pause by the graphic nature of the birth mother's description of her marriage and the conception of Z, these matters likewise did not absolve the local authority and the Children's Guardian from attempting the enquiries I have outlined.

55. However, whilst the matters I have outlined above are of concern, having regard to the legal principles that I must apply to the birth father's application to revoke the adoption order I cannot go on to conclude that they represent the type of fundamental breach of natural justice sufficient to justify the revocation of the adoption order.

56. First, taken by themselves and having regard to the nature and effect of an adoption order and the strong public interest in not set aside adoption orders once made, I am unable to conclude that the regrettable failure by the local authority and the Children's

Guardian to undertake the type of enquiries I have detailed constitutes highly exceptional circumstances for the purposes of determining the application to revoke the adoption order. Each case must be decided on its own facts but, in the context of the deficiencies in the enquiries of the local authority and the Children's Guardian that I have identified, I again note that in *Re Webster* the fact that the children in that case had been denied the opportunity to argue that they should grow up together with their parents as a family in breach of the Art 8 rights and the fact that the parents had been wrongly accused of physically abusing one of their children and three of their children had been removed wrongly and permanently from their care, did not amount to sufficient justification to revoke the adoption orders made in that case, notwithstanding that the procedure that resulted in the public law orders that preceded that adoption orders was fundamentally flawed.

57. Second, in any event and *much* more fundamentally in the context of application to revoke the *adoption* order, I cannot ignore the fact that subsequent to the birth father notifying the court in June 2019 that he sought to care for Z in Uganda the birth father was given notice of the adoption proceedings, was made a party to those proceedings by HHJ Woodward, was given the opportunity by HHJ Woodward to file and serve evidence in those proceedings and the opportunity to participate in the final hearing.

58. Whilst the birth father now contends that he was not given a proper opportunity to participate in the adoption proceedings to the extent that a fundamental breach of natural justice has occurred, in these circumstances the evidence before the court simply does not bear out that contention. The adoption order in respect of Z was made on 8 November 2019. From June 2019 the birth father was aware that there were proceedings on foot in the United Kingdom and that within those proceedings it was proposed that Z be adopted. The birth father instructed solicitors in Uganda and those solicitors indicated to the court in July 2019 that they were instructed to accept service of the adoption proceedings on behalf of the birth father. Thereafter the birth father was made a party to the adoption proceedings in August 2019 and permitted to file evidence. Whilst the birth father now contends that his solicitors in Uganda were unaware of these developments I am sceptical of the claim that those solicitors simply did not receive this information from the local authority in circumstances where the emails were sent securely via Egress and show that they were delivered but not opened, where certain of the emails sent by the local authority to the solicitors in Uganda elicited a response and where the local authority followed up a number of its email communications with telephone calls to the solicitors in Uganda, which telephone calls were answered. Whilst the birth father also relies on the refusal by HHJ Woodward to adjourn the hearing of the *mother's* application for permission to oppose the making of an adoption order notwithstanding that his English solicitors were yet to secure legal aid, this does not in my judgment avail the birth father in circumstances where he was granted emergency public funding one month *before* the final adoption hearing. The birth father was granted emergency public funding on 27 September 2019 yet he had still made no application to court, whether for permission to oppose the making of an adoption order or otherwise, over five weeks later when the adoption order was made on 8 November 2019.

59. Within this context, whilst I accept that it is well established, in *Re B* and in subsequent authorities, that it is fundamental to the making of an adoption order that the birth parent should be informed of the application and that if he or she has no knowledge at all of

the application then, obviously, a fundamental injustice is perpetrated, that is very far from the case here. In the circumstances of this case, four months passed between the birth father becoming aware of the proceedings and indicating his wish to care for Z in Uganda and the making of the adoption order. During that time the birth father had solicitors engaged in Uganda and latterly in this jurisdiction, the father was made a party to the proceedings and directed to file evidence and the birth father had the benefit of an emergency public funding certificate from 27 September 2019. Notwithstanding this position, at no point in the four months between the date at which he contends he became aware of the plan for adoption and the making of the adoption order did the birth father seek to make any of the applications available to him to oppose the making of that adoption order. Indeed, the father made no application in respect of Z until 6 February 2020, some 3 months after the adoption order was made and over four months after the grant of an emergency public funding certificate.

60. In the circumstances, even accepting the procedural deficiencies I have identified in the care and placement proceedings, accepting that the difficulties of litigating at a distance may mean that some communications went astray and accepting that litigating at a distance means that additional time was required to take instructions and implement in this jurisdiction, I am satisfied that the position in the adoption proceedings as articulated in the evidence before the court cannot possibly be said to amount to a fundamental breach of natural justice the kind that constitutes the highly exceptional circumstances justifying the exercise the court's discretion to revoke an adoption order.

CONCLUSION

61. In the circumstances, and notwithstanding the criticisms I have levelled at the local authority and the Children's Guardian regarding the steps taken during the care and placement proceedings to identify and locate the birth father, I am not satisfied that the birth father has demonstrated the highly exceptional circumstances grounded in a fundamental breach of natural justice required to justify the High Court revoking an adoption order pursuant to its inherent jurisdiction. In those circumstances, and acknowledging the gravity of the decision and the likely impact of it on the birth father, I dismiss the birth father's application.

62. Before leaving this matter, it is important to reiterate that the requirement for a local authority to take all reasonable steps to identify, locate and give notice to a parent in the context of public law proceedings, and the responsibility on a Children's Guardian to satisfy themselves independent of the local authority that all such reasonable steps have been taken, applies equally to public law proceedings involving parents who may be located in a foreign jurisdiction. Whilst what constitutes reasonable steps will depend on particular circumstances of the case, methods exist for obtaining information from foreign jurisdictions on the whereabouts of a child's parent or parents. In the absence of an applicable international instrument to facilitate the exchange of such information between jurisdictions, these methods will also include requesting information from the embassy, High Commission or consulate of the relevant foreign country, seeking information via non-government organisations that provide family tracing services, such as the Red Cross, and making enquiries of other known relatives (always taking care that such enquiries not place the parent in question in danger). In the context of the principle that children are generally best looked after within their own family, save where that outcome is not consistent with their welfare, and that a care order on a plan for adoption is appropriate only where no other course is possible in the

child's interests, local authorities and Children's Guardians *must* be astute to avail themselves of these avenues when seeking to demonstrate to the court that all reasonable steps have been taken to identify and locate a parent.

63. That is my judgment.